IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16/12/2003

Coram

The Honourable Mr.Justice M. KARPAGAVINAYAGAM

CRIMINAL ORIGINAL PETITION No.30168 of 2003

K.V.T. @ Thirupathiaiah ..Petitioner(A2)

-Vs-

State by Inspector of Police,
E.4 Maduravoil Police Station,
Chengai East District. ..Respondent

Petition for anticipatory bail filed under Section 438 of Criminal Procedure Code.

For Petitioner : Mr. V. Gopinath, S.C. for
M/s. C.Christopher and
D.Saravanan

: Mr.I.Subramanian, P.P.
Amicus Curiae.

For Respondent : Mr.V. Jayaprakash Narayanan,G.A.

:O R D E R

K.V.T. @ Thirupathiaiah, the petitioner herein seeking for anticipatory bail in respect of the case registered in Crime No.792 of 2003 on the file of the Inspector of Police, E.4, Maduravoil Police Station, Chengai East District, for the offences under Sections 147,148,341,4 47,506(ii) I.P.C. read with Section 25 of the Arms Act, has filed this application in Crl.O.P.No.30168 of 2003.

2. This application was filed on 3.9.2003. The petitioner has engaged Mr.V.Gopinath, the senior counsel through the counsel on record M/s.C.Christopher and D.Saravanan.

3. Even prior to this, the very same petitioner filed an application for anticipatory bail in Crl.O.P.No.29502 of 2003 in respect of the same case on 27.8.2003 through the counsel one Mr.K.Varadha Raja and the same is pending.

4. When the matter came up before this Court after notice for final disposal, Mr.V.Gopinath, the learned senior counsel appearing in Crl.O.P.No.30168 of 2003, would point out that the petitioner Thirupathiaiah has never engaged the said Mr.Varadha Raja, the learned counsel and he has not given instruction to him to file an application for anticipatory bail and as such, the application in Crl.O.P.no.29502 of 20 03 has been filed without any authorisation from the petitioner.

5. To this effect, Thirupathiaiah, the petitioner has filed an affidavit stating that he had not instructed anybody to file anticipatory bail petition on his behalf and as such, petition in Crl.O.P.No.2950 2 of 2003 was filed by the said Varadha Raja, the learned counsel without his authorisation. It is also pointed out in this affidavit that the particulars about the address of the petitioner and his father's name are wrongly given in Crl.O.P.No.29502 of 2003. In the petition in Crl.O.P.No.29502 of 2003 filed by the counsel Mr.Varadha Raja, it is stated that the petitioner is K.V.T. @ Thirupathi Ayya, S/o. Karuppiah, No.5, Gandhi Road, Villivakkam, Chennai, whereas the actual particulars relating to the address and father's name are K.V.T. @ Thirupathiaiah, S/o. K.Venkatasubbiah, No.100, 15th Cross Street, Senthil Nagar, Kolathur, Chennai-99. These particulars are correctly given in the complaint which has been given by the defacto complainant against him as well as in this petition. He has also filed a separate affidavit authorising Mr.V.Gopinath, the learned senior counsel to represent M/s.C.Christopher and D.Saravanan to appear for him.

6. When the matter was taken up by this Court, the said Mr.Varadha Raja, who claimed himself as the counsel for the petitioner in Crl.O.P.No.29502 of 2003 was not present. Then, notice was ordered to him. Despite that, he did not appear. Therefore his Court heard the arguments of Mr.V.Gopinath, the learned senior counsel in Crl.O.P.No.30 168 of 2003 for the petitioner and also the reply by the Government Advocate appearing for the respondent.

7. According to prosecution, one Krishnan, the Power of Attorney Agent of one Abdul Hadhi Basha has been looking after his lands in the village and one Abdul Haque is having lands adjoining the lands of the said Abdul Hadhi Basha and when the said Abdul Haque disturbed the possession of Abdul Hadhi Basha, Krishnan, his Power Agent gave a complaint to the police, but no action was taken and therefore, he filed a suit in O.S.No.197 of 2000 against the neighbouring land owner Mr. Abdul Haque and obtained an interim injunction order in I.A.No.740 of 2000 on the file of the District Munsif Court, Poonamallee. On 5.7.2 003 at about 6.00 p.m., when Krishnan, the Power Agent of Abdul Hadhi Basha was proceeding to the above said land, Thirupathiaiah, the petitioner and other accused, the supporters of the said Abdul Haque, came to the land and questioned the Power Agent and picked up quarrel with him for having resorted to initiation of the proceedings before the police as well as before the civil Court. One Ranganathan, M.L.A., Purasawalkam Constituency (A3) instigated the petitioner to attack him and at his instance, the petitioner with a revolver aimed at him and ultimately, shot at the air. With referen ce to this incident, Krishnan lodged a complaint

before the police. But, no action was taken. Therefore, Krishnan filed Crl.O.P.No.26730 of 2003 before this Court for giving suitable direction to the police. Accordingly, this Court by the order dated 13.8.2003, directed the respondent police to register his complaint and file a final report. In pursuance of this order, the case was registered against the petitioner and others in Crime No.792 of 2003 by the respondent police for the offences under Sections 147, 148, 341, 447, 506(ii) I.P.C. read with Section 25 of the Arms Act. At that stage, the petitioner apprehending arrest in respect of the above offences, filed this application in Crl.O.P.No.30168 of 2003.

8. According to Mr.Gopinath, the learned senior counsel, a false complaint had been given by the complainant against the petitioner and others due to rivalry and actually, no such occurrence had taken place and as the petitioner is a respectable person and dealing with Real Estate business, he seeks anticipatory bail, otherwise if arrested, he will be put to shame and disgrace.

9. This Court has heard the learned Government Advocate and gone through the case diary.

10. It is to be noted in this context that co-accused Ranganathan has already been granted anticipatory bail subject to some conditions. The counsel for the petitioner would submit that the petitioner is prepared to abide by any condition in the event of grant of anticipatory bail.

11. During the pendency of enquiry in this application, this Court by the order dated 29.9.2003 directed that the petitioner shall not be arrested pending enquiry in this petition. Further, this Court passed an order on 4.9.2003 directing the petitioner to hand over the revolver which is alleged to have been used by him to the police within two days. In the very same order, Mr.K.Varadha Raja, the learned counsel in Crl.O.P.No.29502 of 2003 who claimed that he has been engaged by the petitioner, was directed to appear before this Court to verify as to whether such an instruction had been given by the petitioner to him as declared by him in his memo of appearance. In pursuance of the above direction, the petitioner handed over his revolver bearing No.A-87064, 32 Bore revolver make: Webly & Scott by England, and bearing licence No.4/4/V-4 renewed from 01.01.2003 to 31.12.2005, to the Inspector of Police, E4 Maduravoil Police Station. To this effect, the memo by the Inspector of Police dated 9.9.2003 has been filed before this Court. However, Mr.K.Varadha Raja, the learned counsel in Crl.O.P.No.29502 of 2003 did not choose to appear before this Court.

12. In view of the fact that the occurrence took place on 5.7.2003, that the co-accused has already been granted anticipatory bail and that the revolver has been handed over to the police, this Court is of the view that the petitioner also could be granted anticipatory bail with stringent conditions in the light of the serious allegation made against him.

13. In the result, the petitioner shall be released on bail, in the event of arrest, on his depositing a cash security of Rs.10,000/- (Rupees Ten thousand) before the Court of Judicial Magistrate-II, Poonamallee and on his

executing a bond for Rs.10,000/- (Rupees Ten thousand) with one surety for a like sum to the satisfaction of the above said Court and on further condition that he shall report to the respondent police daily at 10.00 a.m. until further orders. The petitioner shall surrender within two weeks from the date of receipt of this order, or else, this order would stand automatically cancelled.

14. Before parting with this case, this Court is constrained to deal with the sordid feature which is noticed in this case relating to the filing of the application in Crl.O.P.No.29502 of 2003 by one K. Varadha Raja, the counsel on behalf of the petitioner, even without getting any instruction from the petitioner.

15. In this case, the occurrence had taken place on 5.7.2003. Initially, the complaint given by Krishnan, the Power Agent of Abdul Hadhi Basha was not entertained by the police. Subsequently, as stated earlier, by the order dated 13.8.2003 of this Court, the respondent registered the case. Within a few days, Mr.K.Varadha Raja, the counsel claiming himself that he has been instructed to appear on behalf of the petitioner, filed a petition for anticipatory bail before this Court in Crl.O.P.No.29502 of 2003 on 27.8.2003 along with the memo of appearance. Actually, no instruction had been given to him by the petitioner, who has filed an affidavit to the said effect.

16. Without the knowledge that another application had already been filed on his behalf in Crl.O.P.No.29502 of 2003 and the same is pending, the petitioner filed Crl.O.P.No.30168 of 2003 by engaging the counsel M/s. C.Christopher and D.Saravanan, who in turn engaged Mr.V. Gopinath, the senior counsel to argue on behalf of the petitioner Thirupathiaiah. This application was filed on 3.9.2003. Only at that stage, the petitioner came to know that on his behalf, an application has been filed earlier in Crl.O.P.No.29502 of 2003 without getting any instruction from him. Therefore, he filed an affidavit in Crl.O.P.No.29502 of 2003 stating that he has not instructed anybody to file anticipatory bail petition and the said anticipatory bail petition has been filed by the same advocate with an ulterior motive without his instruction by giving different father's name and address.

17. In view of such development, as indicated above, this Court was constrained to issue notice to the said Varadha Raja, the counsel, who claims to be a member of MHAA. Despite adjourning the matter for several hearings, the said K.Varadha Raja has not chosen to appear before this Court, which conduct on the part of the counsel would show that the statement of the petitioner that he has not given any instruction to him is true. Further, counsel address was not furnished in the memo and his Enrollment Number also has not been given.

18. It is quite unfortunate to notice in recent times that the anticipatory bail applications have come to be filed by different advocates in respect of one and the same accused in the same crime number both in the Sessions Court as well as in the High Court.

19. Therefore, this Court asked Mr.V.Gopinath, the learned senior counsel to give suggestion to avoid this anomalous situation in future. Mr.I.Subramanian, the learned Public Prosecutor also was appointed as Amicus Curiae to give suggestion to this Court so that suitable direction could be given to the Registry of this Court as well as to the Sessions Courts. Both of them made submissions at length and filed notes of submissions.

20. This Court on earlier occasion would come across a case where an accused filed an application for anticipatory bail before the this Court and the same was dismissed. After dismissal, he engaged counsel at Madurai to file an application for anticipatory bail before the Sessions Court, Madurai without informing about the dismissal of the application in the High Court. The said application was dismissed by the Madurai Sessions Court on merits. The accused moved another application through another counsel before the High Court without showing the dismissal of the earlier applications both in the High Court and in the Sessions Court. The same was again dismissed on merits. Even thereafter, the petitioner engaged one other counsel before the Sessions Court at Madurai and filed an application for anticipatory bail without the earlier details. This time, the accused was able to get anticipatory bail before the Madurai Sessions Court subject to some conditions. Even though anticipatory bail had been obtained by him from the Madurai Sessions Court, another application has been moved before the High Court without knowing about the anticipatory bail order of the Sessions Court. When the matter came up before the High Court, neither the counsel for the accused nor the prosecutor informed about the grant of anticipatory bail by the Sessions Court. However, having no knowledge about that, this time, the High Court granted anticipatory bail subject to some condition.

21. The most funniest part is that thereafter, even though the petitioner was able to get anticipatory bail both in the Sessions Court and in the High Court, without knowing the same, one other counsel on behalf of the petitioner filed an application again for anticipatory bail before this Court in respect of the very same case. Only at that stage, this Court was able to find out the sorry state of affairs where the petitioner even after getting anticipatory bail both from the Sessions Court and the High Court, again moved the High Court by engaging different counsel. In that matter, ultimately, this Court found that the police officers have not given proper instruction to the Prosecutor concerned and consequently, this anomalous situation was created wherein the Sessions Court granted anticipatory bail without knowing the order of the High Court dismissing the anticipatory bail application earlier or the Sessions Court granting bail without knowing that already anticipatory bail granted by the High Court. This Court was constrained to conduct enquiry in that matter and summoned the persons concerned and ultimately, this Court imposed heavy costs on the accused concerned.

22. These occasions had arisen due to the only reason that instructions have been given separately to different counsel both by the friends and relatives of the accused as well as the accused and on those instructions, the different counsel would rush to the Court to file separate applications in different fora. This situation would often arise because of the fact that there is no opportunity for the counsel to have a direct contact

with the client in such matters.

23. It is quite obvious that such an unsavory situation arises in matters of anticipatory bail because of the fact that the Criminal Rules of Practice does not provide for vakalat but merely provides for a Memo of appearance to be filed on behalf of the accused persons, be it before the lower Courts or in the High Court for that matter. Ultimately, the different counsel, who are being misled by the friends and relatives of the accused and the accused, on the basis of their instruction, have filed different applications before different fora simultaneously, only by filing of memo of appearance as nobody insists for vakalat to be obtained from the accused. So, in order to avoid such anomalies, the present endeavour is made detailing the relevant provisions of the Criminal Rules of Practice and suggesting ways and means to remove such ugly picture in future.

24. The Criminal Rules of Practice and Orders are framed and issued from time to time by the Government and the High Court in exercise of the powers conferred by Article 227 of the Constitution of India. The preamble to the Criminal Rules of Practice, Madras would however state that the High Court makes the rules and orders for the guidance of Criminal Courts and the High Court.

25. Rule 29(28) of the Rules of Practice provides as under:

"Pleader to file vakalatnama for prosecution and memo of appearance for defence.--- (1) Every Pleader, as defined in Section 4(r) of the Code other than an Advocate or a Public Prosecutor, appearing for the prosecution in any criminal proceeding other than a Criminal Appeal shall file in court a vakalatnama from his client authorizing him so to appear. In all Criminal Appeals, such pleader may file a memorandum of appearance instead of a vakalat. Every such pleader defending an accused person and every Advocate appearing in any criminal proceedings in any Court shall be required to file a memorandum of appearance containing a declaration that he has been duly instructed to appear by, or on behalf of, the party, whom he claims to represent.

In all other cases, a vakalat is required."

26. Thus, Rule No.29(28) of the Criminal Rules of Practice does not contemplate filing of vakalat and as per the rule every Advocate appearing in any court on behalf of accused shall be required to file a memorandum of appearance containing declaration that he has been fully instructed by, or, on behalf of the party, whom he claims to represent.

27. Rule 247 (234) provides that the rules and orders framed and issued by the High Court shall govern the practice of the High Court on the appellate side to the extent to which they are applicable. Apart from the aforesaid two provisions, the Criminal Rules of Practice does not lay down any other guidance or criteria in the matter.

28. In the case reported in 1988 L.W. (Crl.) 185, the Madras High Court had occasion to consider the application of the Criminal Rules of Practice and with reference to the Rule 29(1), it had observed that in the context of the specific provision contained therein, proceedings for

maintenance even though they are in the nature of criminal proceedings, a memo of appearance would suffice for defending a husband/respondent in the above proceedings.

29. It has been held in MANIKONDA LINGAYYA v. EMPEROR (1924 The Madras Weekly Notes 51) that a memorandum of appearance is sufficient for the valid presentation a criminal appeal and no vakalat is necessary for the same.

30. Similarly, in the bail applications also, this Court would come across cases where the bail applications are being filed through memo of appearance by the different counsel for the same accused even without getting instruction directly from the accused who is in prison.

31. This Court would recall one shocking incident. In one case, the complainant party himself had arranged a counsel to file a bail application on behalf of the accused who was in prison against whom the complainant party had a revengeful grudge and after getting the bail application ordered, the complainant party arranged for sureties and furnished the same and in pursuance of the bail order of the Judicial Magistrate after accepting the sureties, the accused person who had not known about the bail application and the bail order, was released from the jail and when he came out of the jail, he was murdered by the other party. In the light of these situations, question arises, how to prevent these awkward and anomalous situations?

32. As pointed out in the Criminal Rules of Practice and in 1924 Madras Weekly Notes page 51(supra), this Court is not inclined to insist for vakalat as vakalat requires affixure of stamp. Therefore, it would be better to insist for the filing of memo of appearance with signature of every accused authorising the counsel to appear on his behalf and the same must be attested by an Advocate or Notary Public and the same shall be identified by the counsel appearing for the accused in the case of Anticipatory bail. Further, it is to be noted that in the memo of appearance, the counsel should give the Enrollment number as well as the detailed address so that the Court could contact the counsel for further clarification. Similarly, in the bail application, the memo of appearance with signature of accused attested by Prison authorities can be insisted.

33. In T.D.JOSEPH v. SUNIL AND OTHERS (1995(2) L.W.441), a Division Bench of this Court, while dealing with anticipatory bail application, emphasized that either the Sessions Court or the High Court while granting anticipatory bail, must be satisfied that the person who seeks relief was within its jurisdiction and this satisfaction cannot merely arise on the basis of some address given in the cause title of the petition even without a supporting affidavit and there must be materials to show to the court to satisfy its conscience that the person concerned was certainly within its jurisdiction.

34. Therefore, the following directions are being issued to the Registry of this Court as well as to the other Courts in regard to entertainment of the bail applications as well as the anticipatory bail applications:

(1) In the case of applications seeking for anticipatory bail, the Office should insist that the memo of appearance should contain the signature of every accused and the same must be attested by an Advocate or a Notary Public and also to be identified by the counsel appearing for the accused.

(2) In the case of bail applications where the accused is in judicial remand, it shall be insisted that the memo of appearance should contain the signature of the accused attested by the Prison Superintendent or Jailor. It would be desirable for the Prison Superintendents to forward such memo of appearance signed by the accused, duly attested by them, to the Advocates or the near relatives of the accused without any delay whatsoever.

(3) In the anticipatory bail application, as laid down by the Division Bench of this Court in 1995(2) L.W. (Crl.) 441, the Office should insist for the clear particulars about the address of the person who seeks for anticipatory bail to verify whether he was within its jurisdiction either with supporting affidavit or some other materials and also the address particulars of the advocate as well as his Bar Council Enrollment Number.

35. These directions are issued subject to the approval of My Lord the Hon'ble The Chief Justice. Therefore, the Registry is directed to place the papers before My Lord The Hon'ble The Chief Justice for approval and for issuing administrative directions to the courts concerned.

36. This Court records its full appreciation for the services rendered by Mr.I.Subramanian, the learned Public Prosecutor (Amicus Curiae) and Mr.V.Gopinath, the learned senior counsel in this matter.

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